

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

HEIDI SEEKAMP, *On Behalf of Herself and
All Others Similarly Situated*,

Plaintiff,

vs.

IT'S HUGE, INC. also known as
FUCCILLO AUTOMOTIVE GROUP, INC.,
et al.,

Defendants.

Civil Action No.:

09-cv-00018-LEK-CFH

**ORDER OF PRELIMINARY
APPROVAL OF SETTLEMENT AGREEMENT**

WHEREAS, the Plaintiffs and Defendants have entered into a Settlement Agreement intended to resolve the litigation pending in this Court; and

WHEREAS, the Settlement Agreement, together with supporting materials, sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of these actions against the Defendants; and

WHEREAS, the Court has before it the parties' Motion for Preliminary Approval of Settlement and Memorandum in Support of Motion for Preliminary Approval of Settlement, together with the Settlement Agreement and supporting materials; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement Agreement were the result of good faith, arm's length settlement negotiations between competent and experienced counsel for both Plaintiffs and Defendants,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.

2. The terms of the parties' Settlement Agreement are hereby conditionally approved, subject to further consideration thereof at the Final Approval Hearing provided for below. The Court finds that said settlement is sufficiently within the range of reasonableness and that notice of the proposed settlement should be given as provided in this Order.

3. Pursuant to Fed R. Civ. P. 23 the Court has certified the following Class:

All Consumers who purchased the ATSD from any of the Fuccillo dealerships from January 7, 2003 to the present. Excluded from the class are any defendants, their respective parents, employees, subsidiaries and affiliates, their alleged coconspirators and all government entities.

(Doc. No. 86).

4. The Court approves the Class Notice of Settlement attached hereto as Exhibit E to the parties' settlement agreement. The Court also approves the Notice Program as set forth in Section VIII of the Settlement Agreement.

Notice to Settlement Class

5. Counsel for the Class ("Class Counsel") are as follows:

Sergei Lemberg
Stephen Taylor
Lemberg & Associates, LLC
1100 Summer St.
Stamford, CT 06905
Tel: (203) 653-2250
Fax: (888) 953-6237

&

Martin Mushkin
Law Office of Martin Mushkin, LLC
1100 Summer St.
Stamford, CT 06905

Tel: 203-252-2357

Fax: 203-547-7540

6. Beginning no later than August 15, 2014 the Class Administrator shall cause to be disseminated the notices, substantially in the form attached as Exhibits E to the Settlement Agreement and in the manner set forth at Section VIII-D of the Settlement Agreement. Such Notice Program will be completed expeditiously pursuant to the terms of the Settlement Agreement.

7. Class members will have 60 days from the Notice Date to opt out. Class members will have 60 days from the Notice date to submit objections. Class members will have 60 days from the Notice Date to file a claim. Prior to the Final Approval Hearing, Plaintiffs and/or the Claims Administrator shall serve and file a sworn statement attesting to compliance with the provisions of this paragraph.

8. The notice to be provided as set forth in the Settlement Agreement is hereby found to be the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Fed R. Civ. P. 23, due process, the Constitution of the United States, the laws of New York and all other applicable laws. The Notices are accurate, objective, informative and provide Class members with all of the information necessary to make an informed decision regarding their participation in the Settlement and its fairness.

Requests for Exclusion from the Settlement Class

9. Any member of the Settlement Class who wishes to be excluded (“opt out”) from the Settlement Class must send a written Request for Exclusion to the Class Action

Administrator, so that it is received by at the address indicated in the Notice on or before the close of the opt out period. The Request for Exclusion shall fully comply with the requirements set forth in the Notice.

10. Any member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the Settlement Fund pursuant to the Settlement Agreement.

The Final Approval Hearing

11. A hearing on final settlement approval (the “Final Approval Hearing”) is hereby scheduled to be held before this Court on to consider the fairness, the reasonableness, and adequacy of the proposed settlement, the dismissal with prejudice of this class action with respect to the Released Parties that are Defendants herein, and the entry of final judgment in this class action. Class Counsel’s application for award of attorney’s fees and costs shall be heard at the time of the fairness hearing.

12. The Fairness Hearing is scheduled for November 12, 2014 at 10:30 AM in Albany.

13. The date and time of the Fairness Hearing shall be set forth in the Notice, but the Fairness Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted by the Court. Class Counsel will advise members of the settlement class of any scheduling issues by way of the settlement website.

14. Any person or entity that does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. Settlement Class members who do not enter an appearance through their own attorneys will be represented by Class Counsel.

15. Any person who does not elect to be excluded from the Settlement Class may, but need not, submit comments or objections to the proposed Settlement. Any Class member may object to the proposed Settlement, entry of Final Order and Judgment approving the settlement, and Class Counsel's application for fees and expenses by serving a written objection.

16. Any Class member making the objection (an "objector") must sign the objection personally. An objection must state why the objector objects to the proposed Settlement and provide the basis to support such position. The failure to state the basis of any objection shall render such objection invalid, and all persons desiring to appear at the Settlement Hearing shall have filed written objection as provided herein as a condition of appearing and being heard. If an objector intends to appear personally at the Fairness Hearing, the objector must include with the objection a notice of the objector's intent to appear at the hearing.

17. Objections, along with any notices of intent to appear, must be filed no later than 60 days from the Notice Date. If counsel is appearing on behalf of more than one Class Member, counsel must identify each such Class Member and each Class Member must have complied with the requirements of this Order and the Notice. These documents must be filed with the Clerk of the Court at the following address:

Clerk of the Court
U.S. District Court for the Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway
Albany, NY 12207

18. Objections, along with any notices of intent to appear, must also be mailed to Class Counsel and counsel for Defendant at the address listed below:

Class Counsel

Sergei Lemberg
Stephen Taylor
Lemberg Law, LLC
1100 Summer St.
Stamford, CT 06905
Tel: (203) 653-2250
Fax: (888) 953-6237

Defense Counsel

Matthew J. Kelly
Roemer, Wallens Law Firm
13 Columbia Circle
Albany, NY 12203
Tel: 518-464-1300
Fax: 518-464-1010

19. Only Class Members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Fairness Hearing. Any Class Member who does not timely file and serve an objection in writing to the Settlement, entry of Final Judgment, or to Class Counsel's application for fees, costs, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

20. Persons wishing to be heard at the Fairness Hearing are required to file written comments or objections and indicate in their written comments or objections their intention to appear at the Fairness Hearing. Class members need not appear at the hearing or take any other action to indicate their approval.

21. All members of the Settlement Class who do not personally and timely request to be excluded from the Settlement Class are enjoined from proceeding against the Defendants for


the claims made in the Complaint if the Settlement Agreement is approved following the Fairness Hearing.

Other Provisions

22. Upon approval of the settlement provided for in this Settlement Agreement, each and every time period and provision thereof shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

23. All reasonable costs incurred in notifying members of the Settlement Class, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

SO ORDERED in Albany, NY this 16th day of July, 2014.



Lawrence E. Kahn
U.S. District Judge